

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION

OPIATE LITIGATION

This document relates to:

All Cases

MDL 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

**RESPONSE OF PLAINTIFFS' EXECUTIVE COMMITTEE TO MOTION OF CERTAIN DEFENDANTS
FOR LEAVE TO FILE MOTION FOR GAG ORDER AND RELATED RELIEF**

Certain defendants ("Movants")¹ seek leave from this Court to seek sanctions against certain plaintiffs' lawyers for appearing on a public-affairs television news program and making statements about the opioid epidemic, a public health crisis of unprecedented proportions and concomitant public interest. Leave to file this blatantly self-serving and improper motion (the "Motion") should be denied. The Plaintiffs' Executive Committee ("PEC") submits this memorandum to provide context for the motion for leave. The PEC expects that the three individual lawyers who are the subject of the underlying Motion (only one of whom is affiliated with a PEC firm) will respond for themselves to the underlying motion if the Court grants leave to file it, but the PEC submits that no such motion should be allowed to proceed, because it would be inimical to the Court's orders to date and to its case management plan.

This Court has stayed the filing of motions like this so that the parties and the Court can focus on preparing for trial and exploring settlement possibilities. The

¹ Movants are Endo Health Solutions Inc., Endo Pharmaceuticals Inc., Par Pharmaceutical, Inc., and Par Pharmaceutical Companies, Inc., Allergan Finance, LLC, Allergan PLC, AmerisourceBergen Drug Corporation, H.D. Smith, Cardinal Health, Inc., Discount Drug Mart, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., Mallinckrodt LLC, McKesson Corporation, Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company.

proposed Motion is nothing but a distraction from the tasks at hand, and it is precisely to avoid such distraction that this Court has placed a moratorium on the filing of such motions. That is all the more true here because of the utter lack of merit to Defendants' complaints about the appearance, on *60 Minutes*, of Ohio Attorney General and governor-elect Mike DeWine, Michael Moore (counsel to the State of Ohio), and Burton LeBlanc, one of the lawyers representing the City of Cleveland.

The PEC notes, to begin with, that the statements made by Governor DeWine, and Messrs. Moore and LeBlanc were entirely true, were on a topic of great public importance, and were not protected by court order. Movants' attempt to show otherwise fails on the face of their motion and on even a cursory review of the *60 Minutes* episode at issue. Movants attempt to characterize descriptions of what the ARCOS database is and what kinds of data it contains as disclosure of the data itself, but clearly that is not the case. Indeed, the lawyers (and Governor DeWine) clearly understood – and even openly acknowledged – the limits of what they could disclose, and so didn't disclose what they couldn't (*i.e.*, specific information about the ARCOS data). Movants' suggestion that discussion of the number of pills shipped to Kermit, West Virginia violated any order of confidentiality is entirely groundless – that information was disclosed before this MDL was created and was unsealed by the state court in West Virginia.²

Movants suggest that counsel, including Governor DeWine, was attempting (many months before trial) to influence the jury pool in some improper fashion, but completely

² The dishonesty of Movants' accusations against Mr. Moore is even more startling. As their own quotation shows, Mr. Moore stated that he didn't "care one whit about any money in this case. Not one whit whatsoever about it." See Movants Mem. at 3. Five pages later, this statement about what Mr. Moore cares about has been recast and distorted by Movants as a suggestion by Mr. Moore that "he would not receive 'one whit' of money from this litigation," see *id.* at 8, a statement (and suggestion) their own quotation shows Mr. Moore never made. If Movants had legitimate bases to complain of counsel's behavior, they would not have to stoop to inventing them.

ignore that the issues in this case are of such public interest that every educated citizen is aware of this litigation and what defendants stand accused of. Moreover, citizens of this judicial district in particular have their own direct experience of the opioid epidemic – it is one of the reasons this district was chosen as the appropriate forum for litigation. Certainly, this Court will need to take steps, at trial, to ensure that juror decisions are based only on the evidence presented in court, but attempting to silence discussion of these issues in the public forum is neither proper nor warranted. The attempt to do so is especially inappropriate coming from defendants who have been and are engaged in public relations campaigns designed to influence public opinion across the country and who, as this Court has already been informed, have attempted, secretly, to influence opinion specifically in Cuyahoga County through the “Leaders’ Quest” trip and the interviews leading up to it, all of which were conducted without disclosure of the participation of certain defendants in planning that trip.

Indeed, McKesson has already responded specifically to the *60 Minutes* episode. A section on its website entitled “*60 Minutes* Response” states McKesson’s view that the program presented a “one-sided story,” and goes on to present McKesson’s view of the opioid crisis and its own lack of culpability. (A copy of McKesson’s *60 Minutes* Response is provided as Exhibit 1.) It recites McKesson’s views of the causes of the crisis and, states that “the increase in overdose deaths in the United States is being driven by abuse of illegal drugs, and not the prescription medications that distributors deliver to DEA-registered and state-licensed pharmacies,” without mentioning that that more than 80% of heroin users begin with a prescription pharmaceutical. It reports McKesson’s view that “only the DEA has access to” the information in ARCOS. It notes that it “maintain[s] – and continuously enhance[s] – **strong programs** designed to detect and prevent opioid diversion.” See Exhibit 1 (emphasis in original).

Moreover, McKesson’s “*60 Minutes* Response” is part of a larger public relations effort to influence public opinion about the opioid crisis and McKesson’s role. The link to

the *60 Minutes* Response is found on a section of the McKesson website headed “Opioid Abuse – Fighting the Epidemic.” (A copy of the main page for “Opioid Abuse – Fighting the Epidemic” is provided as Exhibit 2.) A link to that page appears on McKesson’s home page, with the following text: “Learn about McKesson’s innovative security programs, order monitoring initiatives and policy recommendations to help curb the opioid epidemic.” (A copy of the McKesson home page with this link is Exhibit 3.) McKesson has taken full advantage of its website to present its view of the opioid crisis to the public, and should not complain when Plaintiffs’ lawyers and public officials comment as well.

McKesson is, of course, not the only defendant engaged in a campaign to influence public opinion about the opioid crisis. The Purdue defendants have been running full-page advertisements in *The New York Times* and the *Wall Street Journal* for months. These advertisements suggest to the public that Purdue is already doing its part to stem the opioid epidemic and are clearly intended to sway public opinion in favor of Purdue. (Examples of these advertisements are provided as Exhibit 4.) The advertisements state that the opioid crisis “is the result of multiple factors” and suggest that Purdue has been in the forefront of solving it. Apparently, Movants are only too happy to influence the jury pool through large-format advertising, but become concerned when counsel, including a prominent public official, comment on the same issues and present a different perspective.

Some of Purdue’s other efforts to sway public opinion have been less transparent. In July, 2018, Purdue and its counsel, Mark Cheffo apparently provided a “background briefing” to *Bloomberg* news that resulted in a story presenting Purdue’s perspective and, specifically, attacking co-lead counsel in this MDL. The *Bloomberg* story does not mention Mr. Cheffo, and nowhere suggests that Purdue was a source for any information in the story (mentioning the company only once, in passing, as a defendant in opioid litigation), but an internal Purdue email, produced in discovery, brags that the article “is the result [of] background briefing” provided by the company, including Mr. Cheffo and refers to

the story as “[p]art of the comms team effort to broaden the story.” See Exhibit 5. Mr. Cheffo apparently remains free to whisper in the press’s ear, while he seeks to gag attorneys on the public side from speaking openly.

It is inevitable, and appropriate, that the opioid epidemic is, and will continue to be, a subject of robust public debate. A public health crisis of this magnitude raises multiple important issues about prescription pharmaceuticals, the control of dangerous substances, how to address and abate this crisis, and how to prevent future epidemics of this type. In this context, transparency is especially important. The public should hear from all sides of the issue, and should be aware who is saying what at any given time. Nothing in the *60 Minutes* broadcast threatened the integrity of these proceedings, nor undermined the transparency of the public debate. As noted above, Movants have not identified *any* confidential information that was disclosed or any court order that was violated. It is, rather, the Movants’ attempt to gag the Plaintiffs, to prevent the State of Ohio and other public entities from participating in this debate (even as defendants’ public relations campaigns continue apace) that undermines these proceedings and the integrity of the public response to the opioid crisis. This Court should not entertain such a motion.

This is especially true given the very high bar Movants face in overcoming the First Amendment protections for the speech they seek to suppress. See, e.g., *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (“Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.”); accord *Cty. Sec. Agency v. Ohio Dep’t of Commerce*, 296 F.3d 477, 485 (6th Cir. 2002); *In re King World Prods., Inc.*, 898 F.2d 56, 60 (6th Cir. 1990); see also *United States v. Scarfo*, 263 F.3d 80, 92 (3d Cir. 2001) (a gag order is a prior restraint on speech that “raises rights under the First Amendment of the United States Constitution.”); *Bailey v. Sys.*

Innovation, Inc., 852 F.2d 93, 98 (3d Cir. 1988) (a gag order carries with it “a heavy presumption against its constitutional validity.”).³ In light of this heavy burden, Movants should not be permitted to waste the Court’s and the parties’ time with a motion that can only distract from the real work to be done in these proceedings.

The PEC reserves the right to submit substantive opposition to the motion for the gag order in the event that Movants’ motion for leave to file their motion is granted.

CONCLUSION

For the foregoing reasons, this Court should deny Movants’ motion for leave to file their motion for a gag order and other relief.

Respectfully submitted,

s/Joseph F. Rice

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³ There is no doubt that what Movants seek is a “gag order”; they themselves so characterize it. *See* Movants’ Mem. at 12 *et seq.*

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2019, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF system.

s/ Peter H. Weinberger

Peter H. Weinberger

Plaintiffs' Liaison Counsel

EXHIBIT 1

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60 Minutes

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McKesson Responds to 60 Minutes Story about the Opioid Crisis Litigation

On December 16, 2018, 60 Minutes aired a segment profiling the plaintiff lawyers who are leading the lawsuits against the companies that manufacture and distribute prescription opioids.

We were disappointed that 60 Minutes chose to present such a one-sided story, which uncritically repeated the plaintiffs' lawyers' charges without any challenge.

The plaintiff attorneys profiled by 60 Minutes simplified the evolution of the crisis. They made no mention of the other groups that play a significant role in the supply chain for prescription medicines—the physicians who prescribe the medicine, the pharmacists who fill the prescription, the government agencies that license the pharmacists, the insurers who determine which medicines to reimburse and in what doses/quantities, and the Drug Enforcement Administration (DEA), which sets the quotas for how many opioids are produced in any given year. Nor did the story mention that the increase in overdose deaths in the United States is being driven by abuse of illegal drugs, and not the prescription medications that distributors deliver to DEA-registered and state-licensed pharmacies.

The segment also focused on reporting data that the industry gave the court—confidential data that the DEA appropriately objected to making public. Distributors do regularly report sales of controlled substances to the DEA, but no company within the supply chain has access to the overarching distribution data—only the DEA has access to that full information. [Find out more information about ARCOS data.](#)

The safe and secure distribution of all medications, including controlled substances, is the primary focus of pharmaceutical distributors. For more information on pharmaceutical distributors' role in the supply chain, please visit the [Healthcare Distribution Alliance's website](#).

McKesson's Role

As for our company, we are deeply concerned by the impact the opioid epidemic is having on families and communities across our nation—and we're committed to being part of the solution.

In our role as a distributor, we maintain – and continuously enhance – **strong programs** designed to detect and prevent opioid diversion within the pharmaceutical supply chain. We only distribute controlled substances, including opioids, to DEA-registered and state-licensed pharmacies. For many years, controlled substances ordered by pharmacies in the U.S. (including both orders that are shipped and those that are deemed suspicious and blocked) have been reported to the DEA for their internal database. These reports to DEA are not disclosed publicly for reasons that should be obvious—to protect the DEA's investigations, as well as the integrity of the supply chain and the distributors' anti-diversion programs.

McKesson is working with others to advance a series of **company initiatives** focused on helping to address the opioid epidemic and we offer thoughtful **public policy recommendations** – including the **Prescription Safety-Alert System** (RxSAS) technology proposal – and to support **innovative programs and partnerships** that we believe can have a meaningful impact on this challenging issue. We've also contributed \$100 million to the **Foundation for Opioid Response Efforts** (FORE), an 501(c)(3) non-profit dedicated to combating the opioid crisis in the U.S.

Despite 60 Minutes' continued over-simplified reporting on this highly complex issue, we remain committed to acting with urgency and working with others to end this national crisis.

We've prepared a short Q&A to address several misconceptions about the opioid epidemic, the role distributors play in the industry, and what McKesson is doing to help address the crisis. We'd also encourage you to visit the website of the distributor trade association, the **Healthcare Distribution Alliance**, for more information.

What does McKesson do?

As a pharmaceutical distributor, we ensure that medicines prescribed by licensed doctors are delivered to licensed pharmacies so they are available for patients who need them, when they need them, where they need them. In many cases, McKesson makes deliveries to our more than 40,000 customers across the country within a matter of hours, in both urban and rural areas. These deliveries include both over-the-counter and prescription medications.

In the case of controlled substances, we have to balance our mission to deliver medicines to pharmacies against our important efforts to prevent and detect illegal diversion of those drugs. Controlled substances only represent a small share of our overall business—approximately three to four percent of McKesson's total revenue.

What role did McKesson play in the opioid epidemic?

The opioid epidemic is a complicated, multi-faceted public health crisis that evolved over time due to many contributing factors. McKesson, like other distributors, delivers medications ordered by pharmacists to fill prescriptions written by doctors.

The crisis requires a comprehensive and collaborative approach, and each participant in the pharmaceutical supply chain can play an important role:

- The Drug Enforcement Administration (DEA), which has regulatory oversight for all DEA-registrants (doctors, pharmacists, distributors) and sets yearly quotas for the volume of opioids that can be manufactured
- Drug manufacturers that design, develop and promote the medication
- Doctors who prescribe the medication
- Pharmacists who dispense the medication
- Private and public health insurance groups that determine what they will pay for
- State medical and pharmacy boards that oversee the doctors and pharmacies in their jurisdiction
- Distributors that deliver medications ordered by pharmacists to fill prescriptions written by doctors

The DEA also has exclusive access to the ARCOS information that can help identify over-prescribing and pharmacies filling an excessive number of opioid prescriptions.

Why didn't McKesson have concerns about high volume orders?

When considering the volume of opioids distributed to certain pharmacies by McKesson and other distributors, it's important to put that data in context. For example, from 2007 through 2012, McKesson distributed approximately 151 million doses of oxycodone and hydrocodone in West Virginia. During the same six-year period of time, McKesson distributed nearly 2 *billion* doses of all prescription drugs in West Virginia.

With the benefit of modern, sophisticated data analytics tools, over the last five years we have implemented a more robust and more heavily resourced system to survey and analyze large volumes of data, in order to quickly identify bad actors.

Are the opioids McKesson distributes legally prescribed?

Distributors like McKesson respond to pharmacies' orders, which in turn are based on doctors' prescriptions. McKesson does not supply prescription drugs in amounts greater than pharmacies order, and we do not ship to a particular state or pharmacy without an order from a Drug Enforcement Administration ("DEA")-registered and state-licensed pharmacy.

Does McKesson have controls in place to help prevent diversion?

McKesson has continued to enhance and evolve its anti-diversion efforts to address the changing nature of the diversion threat over time. Over the last five years, we have successfully used the latest technology and the best available internal and external expertise to further enhance controls and to help reduce the chance of diversion or abuse. We continue to invest in and enhance our state-of-the art **Controlled Substance Monitoring Program**. Our CSMP uses complex data analytics to set and manage individual customer thresholds for controlled substances. Each order is analyzed against established monthly thresholds and orders are blocked if they exceed those thresholds.

Why doesn't McKesson just stop distributing opioids?

Opioids have a legitimate medical purpose and, to date, McKesson has continued to distribute these controlled substances so patients will continue to have access to these medication if their physicians conclude that they have a legitimate need for them.

Those profiled on 60 Minutes say that the information in the DEA's ARCOS database is "shocking" and that it should have been obvious to distributors that something was wrong. How do you respond?

We cannot comment on information that the court has sealed and we will not attempt to respond to the plaintiff lawyers' innuendo, which is not backed up by any actual evidence. We do not understand why "60 Minutes" would take the lawyers' statements at face value, particularly given the financial and political interests at stake. Those comments also overlook the fact that only DEA had access to the full range of ARCOS data.

Is McKesson hiding information about how many pills you shipped to pharmacies in Ohio?

It was the DEA that initially objected to the public release of the information that distributors reported about shipments of controlled substances. However, we agree with the DEA that public release of this information could undermine the compliance programs adopted by the various distributors and potentially undermine DEA and law enforcement investigations.

Is it true that thousands of people are dying in Ohio because of prescription opioids?

There were over 4,800 overdose deaths in Ohio in 2017, a number that has nearly tripled since 2010. This is a human tragedy, and McKesson is committed to doing what it can to help address it. But, according to the state of Ohio's own data, Ohio's drug overdose epidemic is *not* being driven by abuse of prescription drugs. Nine out of 10 (89.2%) of these overdoses involved illegal drugs rather than prescription drugs. Since 2010, the state has seen a huge increase in overdoses from illicitly manufactured fentanyl, heroin, cocaine, and methamphetamine, while prescription opioid overdoses have not increased.

Do you have any other comment on the story?

60 Minutes has persisted in producing unbalanced stories on the nation's opioid crisis. Our nation needs professional and objective reporting on this important issue to help policy makers and the public understand the complex drivers of the crisis and what it will take to meaningfully impact the epidemic. We will note that 60 Minutes did not make an effort to reach out to us for this story.

What is McKesson doing to help fight the crisis?

We have taken action through our corporate activities, which includes educating pharmacies and hospitals that purchase from us about the importance of compliance with DEA regulations, as well as how to identify potential warning signs of prescription abuse and diversion. Additionally, McKesson contributed \$100 million to the **Foundation for Opioid Response Efforts** (FORE), a non-profit dedicated to combating the opioid crisis in the U.S.

We are also working with others to advance meaningful solutions to tackle the opioid crisis, including (among other efforts):

- creating a **nationwide clinical alert system** that uses patient prescription history to identify patients at risk for opioid overuse, abuse, addiction or misuse. The system would provide real-time clinical alerts, integrated into pharmacist workflow, across state lines;
- offering complimentary pharmacist training by independent medical experts on how to administer opioid overdose reversal medications such as naloxone;
- supporting opioid addiction prevention and treatment-focused organizations;
- and **actively advocating for public policies** that will help address the opioid epidemic.

Opioid Resources

McKesson's Opioid Initiatives, New Foundation

Learn more about how McKesson's new company initiatives will help fight the opioid epidemic, including the formation of a foundation dedicated to combating the crisis.

[LEARN MORE](#)

Pharmaceutical Supply Chain

McKesson works closely with pharmacies and manufacturers to ensure pharmacies have the medications their patients need. See how medications move through the supply chain.

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Controlled Substance Monitoring Program

Our CSMP uses sophisticated algorithms designed to monitor for suspicious orders, and block the shipment of controlled substances.

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Opioid Policy Recommendations

McKesson has offered policy recommendations that can improve prescribing and dispensing practices, limit the supply of opioids and facilitate better information sharing.

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Partnering Against Opioid Abuse

The opioid epidemic won't be solved by any one participant or idea. McKesson is partnering with others to deploy the best thinking across the country and advance meaningful solutions.

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At McKesson, we take our role in helping to protect the safety and integrity of the pharmaceutical supply chain extremely seriously.

On December 16, 2018, 60 Minutes aired a segment profiling the plaintiff lawyers who are leading the lawsuits against the companies that manufacture and distribute prescription opioids. We were disappointed that 60 Minutes chose to present a one-sided story, which uncritically repeated the plaintiffs' lawyers' charges without any challenge. We encourage you to visit our [60 Minutes Response](#) page, where we've prepared a short Q&A to address several misconceptions about the opioid epidemic, the role distributors play in the industry, and what McKesson is doing to help address the crisis.

As a company, we are deeply concerned by the impact the opioid epidemic is having on families and communities across our nation—and we're committed to being part of the solution. We have formed an independent foundation, to which McKesson contributed \$100 million, dedicated to addressing the crisis. We are also advancing [company initiatives](#) aimed at preventing opioid abuse and offering thoughtful [public policy recommendations](#), including the [Prescription Safety-Alert System](#) (RxSAS) technology proposal. We encourage you to learn more by exploring the information available in the website tabs above.

Each day, our distribution team delivers life-saving medicines to pharmacies, hospitals and clinics that serve millions of Americans. We take to heart that each and every item delivered – every pill bottle, every vial, every ointment – reaches a patient in need. We know that it's not just a package, it's a patient.

Over the past decade, as the opioid epidemic evolved rapidly, we enhanced our teams, processes and technologies dedicated to preventing diversion. We are committed to maintaining – and continuously enhancing – [strong programs](#) designed to detect and prevent opioid diversion within the pharmaceutical supply chain, while also protecting the availability of appropriate treatments for patients with serious illnesses and injuries.

This complicated, multi-faceted public health crisis must be addressed through a comprehensive and collaborative approach. Each participant in the **pharmaceutical supply chain** can play an important role, including:

- The Drug Enforcement Administration (DEA), which has regulatory oversight for all DEA-registrants (doctors, pharmacists, distributors) and sets yearly quotas for the volume of opioids that can be manufactured
- Drug manufacturers that design, develop and promote the medication
- Doctors who prescribe the medication
- Pharmacists who dispense the medication
- Private and public health insurance groups that determine what they will pay for
- State medical and pharmacy boards that oversee the doctors and pharmacies in their jurisdiction
- Distributors that deliver medications ordered by pharmacists to fill prescriptions written by doctors

Today, we are working with others to advance a series of **company initiatives** focused on helping to address the opioid epidemic, support the formation of a foundation dedicated to combating the crisis, offer thoughtful **public policy recommendations** – including the Prescription Safety-Alert System (RxSAS) technology proposal – and to support **innovative programs and partnerships** that we believe can have a meaningful impact on this challenging issue. We are committed to engaging with all who share our dedication to acting with urgency to address this epidemic and working together to end this national crisis. We encourage you to click through to the tabs above to learn more about our response to the opioid crisis.

Opioid Resources

McKesson's Opioid Initiatives, New Foundation

Learn more about how McKesson's new company initiatives will help fight the opioid epidemic, including the formation of a foundation dedicated to combating the crisis.

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EXHIBIT 4

We make prescription opioids. And we want to limit their use.

For more than 25 years, Purdue Pharma has developed opioid medications. While opioid analgesics may help patients with acute and chronic pain when other treatment options are inadequate, earlier this year we decided that our sales representatives will no longer promote opioids to prescribers.

We are acutely aware of the public health risks opioid analgesics can create, even when taken as prescribed. And we are deeply concerned about the toll the opioid crisis is having on individuals and communities across the nation, and as a company now led by a physician, we believe the country needs a new approach to prescribing opioids.

This approach includes supporting patient access to multi-modal pharmacologic and non-pharmacologic treatment options; ensuring opioids are only used when alternative treatment options are inadequate; and **adopting public policies aimed at reducing addiction, abuse, diversion, and overdose related to opioids.**

To help limit a patient's unnecessary exposure to opioids and reduce the number of unused opioids that might end up in the wrong hands, we support initiatives to limit initial opioid prescriptions to no more than seven days.

To help reduce prescription drug abuse and diversion, we advocate that prescribers and pharmacists consult state Prescription Drug Monitoring Program (PDMP) databases before writing or dispensing any opioid prescription. Studies suggest that PDMPs can help reduce the number of prescriptions written for opioids and that PDMP use is associated with a reduction in pain medications received for nonmedical use from multiple doctors.^{1,2}

To support communities that have been affected by the crisis, we've provided funding to the National Sheriffs' Association to help law enforcement distribute the overdose rescue drug naloxone. In addition, we're helping to bring prescription abuse prevention education to high school students across the country.

America's opioid crisis is the result of multiple factors. We believe that all stakeholders — healthcare leaders, drug manufacturers, policymakers, and public health officials — need to come together to drive meaningful solutions forward. While no single intervention alone will solve this crisis, partnerships, determination, and innovative approaches are steps in the right direction.



We manufacture prescription opioids

How could we not help fight the prescription and illicit opioid abuse crisis?

Two doctors founded a company in 1892 now known as Purdue Pharma. Continuing the strong heritage of a research-driven, science-based company, another doctor is currently at the helm as CEO. We're the pharmaceutical company that manufactures OxyContin®. Patients' needs and safety have guided our steps. It's what led us to research and develop medications to help patients. Today, it's what has spurred us to redouble our efforts in the fight against the prescription and illicit opioid abuse crisis. It's why we're taking action.

We support recommendations in *The President's Commission on Combating Drug Addiction and the Opioid Crisis* and the FDA's *Opioid Action Plan*. There are too many prescription opioid pills in people's medicine cabinets. We support initiatives to limit the length of first opioid prescriptions. Reducing the number of excess tablets won't end the epidemic, but we believe it will help rein in the problem. We believe doctors should check their state Prescription Drug Monitoring Program (PDMP) databases before writing an opioid prescription, to guard against doctor-shopping by those trying to game the system. Information sharing between state databases must improve.

Our industry and our company have and will continue to take meaningful action to reduce opioid abuse. We focused our talented research scientists and applied our innovative thinking to making opioids with abuse-deterrent properties, making them harder to crush and, therefore, harder to be abused by snorting or injection. With this investment, we pioneered the pharmaceutical industry's movement toward developing opioids with abuse-deterrent properties when we were the first to receive FDA approval.¹ Developing new formulations is risky and there are never any guarantees, but we did it anyway. Our company also took the initiative to distribute the CDC Guideline for Prescribing Opioids to thousands of prescribers and pharmacists shortly after it was released.

As we continue to fight the prescription opioid and illicit substance abuse crisis, we are applying our resources and our best scientific minds to discover and develop new, non-opioid pain medicines for patients.

No one solution will end the crisis, but multiple, overlapping efforts will. We want everyone engaged to know you have a partner in Purdue Pharma. This is our fight, too.



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We Manufacture Prescription Opioids, and We'll Continue Our Work to Address the Opioid Crisis



Helping patients by making medicines is what we do at Purdue Pharma, and it was the principle upon which physician brothers founded the company. We are currently developing medications to help patients dealing with cancer and central nervous system disorders, while continuing our historic focus on pain management.

Our company makes OxyContin®. While opioid pain medication can help

patients with acute and chronic pain when other treatment options are inadequate, we are aware of the risks opioid pain medicines can create: even when taken as prescribed, they carry risks of addiction, abuse, and misuse that can lead to overdose and death. Earlier this year we ended our practice of promoting opioid medications to prescribers through sales representatives.

Because we are deeply concerned about the toll the opioid crisis is having on individuals and communities across the nation, we think it is important to share some of the measures we support to help address the prescription and illicit opioid abuse crisis.

- We support initiatives to limit initial opioid prescriptions to no more than seven days. This will help limit unnecessary exposure to opioids and reduce the number of unused opioids that might end up in the wrong hands.
- We advocate that prescribers and pharmacists consult state Prescription Drug Monitoring Program (PDMP) databases, which track controlled substance prescriptions in a state, before writing or dispensing any opioid prescription. Studies suggest that PDMPs can help reduce the number of prescriptions written for opioids and that PDMP use is associated with a reduction in pain medications received for nonmedical use from multiple doctors.^{1,2} To aid in this effort, we provided funding to the National Association of Boards of Pharmacy to enable states to connect to a platform and share PDMP data with other states at no cost, which complemented the company's early efforts of advocating for PDMP use.
- We encourage increased adoption of electronic prescribing of controlled substances to help reduce diversion. Unlike traditional paper prescriptions, electronic prescriptions can't be copied or stolen, and they're more difficult to alter or forge.^{3,4}
- We urge everyone to learn more about safer storage of prescription opioids to reduce the likelihood of diversion and misuse. Medication

Guides for opioids include information about safe storage and what to do with any remaining or unused pills after someone stops taking them.

- We joined the Prescription Drug Safety Network, a public-private initiative created by EVERFI, to support school-based prevention education efforts, and we encourage additional organizations to join as well.

America's opioid crisis is the result of multiple factors. We believe that everyone involved — physicians, healthcare leaders, drug manufacturers, drug distributors and retailers, policymakers, law enforcement, and public health officials — need to come together to drive meaningful solutions forward. While no single intervention alone will solve this crisis, partnerships, determination, and innovative approaches are steps in the right direction.

¹ Bao Y, Pan Y, Taylor A. Prescription drug monitoring programs are associated with sustained reductions in opioid prescribing by physicians. *Health Affairs (Project Hope)*. 35(2016)1045–1051. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5336205/>. Accessed July 12, 2018.

² Ali MM, Dowd W, Classen T. Prescription drug monitoring programs, nonmedical use of prescription drugs, and heroin use: evidence from the National Survey of Drug Use and Health. *Addictive Behaviors*. 69(2017)65–77.

³ DrFirst. The evolving EPCS landscape: A prescription for stopping opioid abuse. Retrieved from: https://go.drfirst.com/hubfs/2016-03-24/2h8klr/8842/141586/EPCS_Whitepaper_DrFirst_3.2016.pdf.

⁴ Thomas CP, et al. Prescribers' expectations and barriers to electronic prescribing of controlled substances. *J Am Med Inform Assoc* 2012;19:375e381. doi:10.1136/amiajnl-2011-000209.

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The news and editorial staffs of The New York Times had no role in this post's preparation.

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We Want to Help People Understand the Risks of Misusing Prescription Medications, Including Opioids.



Every day our nation faces tragic stories of struggles with opioid addiction and lives lost to prescription and illicit opioid overdose.

We are deeply concerned about the toll the opioid crisis is having on individuals and communities across the nation. As a manufacturer of prescription opioid medications, Purdue Pharma is committed to supporting meaningful solutions to address this crisis.

We want to help people — including young people — understand the risks of misusing prescription medications, including opioids. The National Institute on Drug Abuse, part of the National Institutes of Health, states, “after alcohol, marijuana, and tobacco, prescription drugs (taken nonmedically) are among the most commonly used drugs by 12th graders.”¹

That’s why we support school-based prevention education efforts, including being a member of the Prescription Drug Safety Network, a public-private initiative created by EVERFI, a leading prevention education innovator. The potential benefits of high school prevention education are significant, with school-based programs shown to save an estimated \$18 in substance-abuse-related medical care, state and local government costs, and lost productivity over a lifetime for every \$1 spent.^{2,3} Founded in collaboration with educators and prevention experts, and launched with support from members of the healthcare industry, as well as community and state leaders, this national coalition brings an innovative digital experience into the classroom that is designed to empower students with knowledge, skills, and strategies to help prevent prescription drug misuse and abuse. Real-world scenarios drive home the lessons and provide students with tips on how to spot and help a friend in trouble.

More than 57,000 students at more than 800 high schools nationwide accessed the digital Prescription Drug Safety prevention curriculum in the 2017-2018 academic year and increased their knowledge on six different learning modules — including the science of addiction, safe use, refusal skills, and supporting a friend — by an average of 49 percent.⁴

Nearly 100,000 students have already participated in this course in schools across the country through the efforts of the Network. We look forward to seeing the Network’s impact grow and to helping more students learn these valuable skills in the coming school year, and beyond.

We hope that others will embrace the importance of prevention-focused education. We urge you to learn more about the national initiative and help broaden the reach of [the Prescription Drug Safety Network](#).

While no one intervention alone will solve this crisis, partnerships, determination, and innovative approaches are steps in the right direction.

¹ National Institute on Drug Abuse. Misuse of Prescription Drugs. January 2018. Retrieved from <https://www.drugabuse.gov/publications/research-reports/misuse-prescription-drugs/summary>.

Accessed August 21, 2018.

² Substance Abuse and Mental Health Services Administration. Substance Abuse Prevention Dollars and Cents: A Cost-Benefit Analysis. Retrieved from <https://www.samhsa.gov/sites/default/files/cost-benefits-prevention.pdf>. Accessed August 21, 2018.

³ Prescription Drug Safety Network. The Case for Prescription Drug Education. Retrieved from http://info.everfi.com/rs/410-YCZ-984/images/White%20Paper_Case%20for%20Rx%20Drug%20Education.pdf. Accessed August 21, 2018.

⁴ Prescription Drug Safety Network. Prescription Drug Safety Course. K-12 Impact Report 2017-2018. Retrieved from <https://everfi.com/networks/prescription-drug-safety-network/impact/>. Accessed August 21, 2018.

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The news and editorial staffs of The New York Times had no role in this post's preparation.

EXHIBIT 5

To: Landau, Dr. Craig (US)[Dr.Craig.Landau@pharma.com]; PPLP Executive Committee[PPLPExecutiveCommittee@purduepharma.com]
From: Martin, Josephine
Sent: Wed 7/25/2018 7:05:16 AM
Subject: Re: Bloomberg: Justice for Opioid Communities Means Massive Payday for Their Lawyers

This article is the result a background briefing by Bob and Mark Sheffo. Part of the comms team effort to broaden the story.

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From: "Dr. Craig Landau" <Dr.Craig.Landau@pharma.com>
Date: Wednesday, July 25, 2018 at 8:01 AM
To: PPLP Executive Committee <PPLPExecutiveCommittee@purduepharma.com>
Subject: Fwd: Bloomberg: Justice for Opioid Communities Means Massive Payday for Their Lawyers

Good perspective.

Craig Landau, MD

President & CEO
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Sent from my iPhone
Please excuse typos and auto-dictation errors...

Begin forwarded message:

From: Shannon Humeniuk <shannon@rodacreative.com>
Date: July 25, 2018 at 07:39:30 EDT
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Subject: Bloomberg: Justice for Opioid Communities Means Massive Payday for Their Lawyers

Justice for Opioid Communities Means Massive Payday for Their Lawyers

Bloomberg

By Andrew Harris, Jared Hopkins and Hannah Recht

July 25, 2018

<https://www.bloomberg.com/graphics/2018-opioid-lawsuits/>

The opioid lawsuits keep coming—hundreds of them—filed by states, cities, counties, Native American tribes and labor unions. While the human tragedy of Americans addicted to these painkillers has been growing for years, the resulting legal drama is just starting.

But one thing is certain: If the lawsuits are successful, the winners will include the lawyers.

A Bloomberg review of almost 100 agreements between the municipalities and their lawyers puts the stakes into focus: If the plaintiffs collect anything close to the maximum \$50 billion that a global settlement may yield, according to a Bloomberg Intelligence estimate, a handful of attorneys could pocket at least one-quarter of that.

The cities and counties that are suing are aware of this. And their elected officials don't generally care. They say they have nothing to lose by hiring skilled attorneys who are willing to work—with no money down—for a cut of a win. Any recovery is better than no money at all, they say.

Bloomberg's analysis offers the first real glimpse into the money at play in what may be one of the biggest legal challenges in U.S. history.

The Lawsuits

Opioids are the most-prescribed class of drugs—more than blood pressure, cholesterol or anxiety medications. In 2012, the peak of the prescription boom, doctors wrote 255 million prescriptions for opioid painkillers.

While the drugs have legitimate use in relieving pain from acute injuries and chronic conditions, their potential for addiction and misuse is high. According to the Centers for Disease Control, more than 46 people died every day from overdoses involving prescription opioids in 2016.

Cities and counties say they've been devastated by the crisis. Collectively, they say they've spent billions of dollars for health care, law enforcement and social services. Now they want to hold opioid distributors and manufacturers responsible.

According to a Bloomberg analysis of court records and lawsuit filings, lawyers have brought more than 900 cases on behalf of states, local governments and tribes, as well as unions, medical practices and individuals. Those suing include some of the hardest-hit communities, stretching from Appalachia to northern California, but also some areas where the crisis has seen fewer prescriptions and lower overdose rates.

Most of the cases are in federal court, and those have been joined together for preliminary proceedings in what lawyers call a multidistrict litigation, or MDL. In an effort to make the litigation move quicker, U.S. District Judge Dan Polster in Cleveland is overseeing the MDL cases and making initial rulings that apply to them all. He has scheduled a trial for three of the cases next year while also pressing for a settlement.

Note: Non-governmental plaintiffs—including unions, individuals and private companies—in the multidistrict litigation are not shown, nor are lawsuits in state courts.

Separately, dozens of states and municipalities, including large cities like New York and smaller communities in Maine, Illinois and elsewhere, have filed suits in state courts, with some seeking a tactical advantage by bringing their case before a local judge. In several instances, state attorneys general are spearheading the litigation.

The state and federal lawsuits are similar, with plaintiffs targeting drug companies such as Oxycontin-making Purdue Pharma LP and drug distributors including McKesson Corp.

The allegations include fraud, negligence, unjust enrichment, false advertising and deceptive marketing. The legal arguments are complex and it's unclear whether all of them (or any of them) will survive the companies' motions to dismiss. But if some of the claims are allowed to proceed, the risk to the companies will grow significantly.

More than 60 percent of the communities in the federal cases have poverty rates above the national average, and two-thirds of the counties had above-average opioid prescription rates in 2016.

In Floyd County, Kentucky, for example, 226 opioid prescriptions were written for every 100 residents in 2016—three and a half times the national average—and the county has a poverty rate of 31 percent.

But affluent communities have sued as well. Montgomery County, Maryland, is among the wealthiest counties in the nation. Just 7 percent of its 1 million residents live in poverty—less than half the national average. And opioid prescriptions are rare, at only 35 per 100 residents.

Most Counties that Filed Suits Have Above Average Poverty and Opioid Prescriptions

The Lawyers

Three attorneys lead the litigation—Joe Rice, Paul Hanly and Paul Farrell. Beneath them

is a 21-lawyer executive committee in charge of coordinating aspects of the cases and a three-lawyer liaison group handling administrative issues. Attorneys from numerous law firms are involved in the case.

Rice, 64, whose firm Motley Rice has more than 100 attorneys, is one of the most successful mass tort lawyers, having led the negotiations with Big Tobacco for a \$246 billion settlement in 1998. Rice's suits against the opioid industry in 2014 were the first in the current wave of litigation.

Hanly, 67, has brought cases against asbestos and pharmaceutical companies. In 2003, his 80-attorney firm, Simmons Hanly Conroy, sued Purdue Pharma. Four years later, he won a \$75 million settlement on behalf of 5,000 patients. He has kept thousands of documents from that case, which is likely to aid the plaintiffs in the current litigation wave.

Farrell, 46, a native of opioid-ravaged Huntington, West Virginia, had multimillion-dollar settlements under his belt when he began suing the industry, and he's viewed by his colleagues as having the best understanding of the distributors' cases. A partner in Greene Ketchum Farrell Bailey & Tweel, the five-person firm is involved in more than half of the lawsuits. Farrell's firm, like those of Rice and Hanly, are now allied with many others in pursuit of damages for their clients and the accompanying payday.

Related story: One Man's \$50 Billion Vendetta Against Opioids

The Recruiting

To enlist clients, hundreds of attorneys fanned out to visit rural courthouses and city council chambers across the nation. Law firms formed alliances with one another and with politically connected local attorneys.

In a pitch to commissioners in Traverse County, Michigan, lawyer Paul Pennock of Weitz & Luxenberg said anyone working at a drug company who didn't notice the crisis building was an "imbecile."

"They were going around to all the Michigan counties," Kathy Dwan, a commissioner in Saginaw County, Michigan, said of the lawyers. "If the pharmaceutical companies didn't have deep pockets, nobody would be suing them."

Cities sometimes issued a formal request for proposal before signing up a law firm, but a referral from a local lawyer often got them a foot in the door. In Ohio, Dayton Mayor Nan Whaley said a local political consultant referred her to Cleveland attorney John Climaco, an alumnus of the Big Tobacco litigation. Other Ohio cities followed suit.

West Virginia's Kanawha County didn't look far for its lawyers. Commissioner Kent Carper is a partner at a firm that's aligned with Farrell in dozens of suits. Carper helped write the state law on public nuisance that Farrell is basing part of his cases on. Carper said there's no conflict because he isn't involved in the litigation.

A local touch sometimes made the difference. In Campbell County, Kentucky, Steve

Pendery, the top elected official, said he bridled at the idea of filing suit because he saw it as a payday for lawyers who “swoop in” to his community. But Pendery, a self-described “free market Republican sort,” said he ultimately decided it was the right thing to do after out-of-state lawyers partnered with local attorneys he knew.

The Companies’ Defenses

Drugmakers and companies that distribute opioids recognize there’s a public health crisis. But they say they’re not responsible and their lawyers have begun filing requests for dismissal.

The companies say the plaintiffs haven’t identified any prescriber of opioids who was duped by supposed misleading advertising. They say the plaintiffs are ignoring “the many independent actions,” such as illegal drug sales, which led to the opioid crisis.

They say they’ve extensively disclosed the risks of prescription opioids and that the Food and Drug Administration approved the drugs’ marketing, and argue that only states have legal authority to sue—not counties or cities.

Matthew Maletta, Endo International Plc’s chief legal officer, said the lawsuits, “fueled by contingency-fee counsel,” will do more harm than good. “These lawsuits effectively hand the reins of law enforcement to private lawyers motivated by a potential bounty,” he said. One worry: patients in need of pain relief may be denied it if the companies stop developing and selling the drugs.

Distributors, meanwhile, point out that they neither market nor prescribe opioids. They say their alleged misconduct—failing to adequately monitor and report suspicious orders—is “too indirect” to support suits against them.

Fiscal Year 2017 Revenue of Key Defendants

The lawyers hope to bring in hundreds more plaintiffs. At an April conference in Las Vegas, one lead attorney said they hope to file about 2,000 total cases. At the conference, the lawyers urged other attorneys to sign up municipalities.

In the fee arrangements reviewed by Bloomberg, the lead lawyers and the dozens of other firms joining them are generally slated to receive anywhere from 25 percent to 33 percent of the total payout, depending on when and how the litigation ends. Some of those firms initially getting at least 30 percent later reduced their fee to 25 percent because so many municipalities have signed onto the litigation. If there’s a trial and appeal, for instance, some lawyers stand to recover 40 percent or more.

The paydays in some cases would be based on the gross value of any award—including money earmarked for crucial public programs like addiction treatment, according to Lester Brickman, a professor emeritus at Benjamin N. Cardozo School of Law who reviewed some of the retainer agreements. In other words, if a settlement includes a program worth \$1 million, lawyers may collect a percentage of the value of that program as well.

Polster or some other judge may have the final word on the amount of legal fees because the litigation is subject to a court’s supervision. Still, the numbers could be

staggering. A settlement for \$50 billion could lead to a \$12.5 billion payday.

There's huge risk for the lawyers. A judge or an appeals court could toss out the claims, and years of work would go unpaid. Juries could reject the cases. Or a settlement could be for a fraction of the amount the sought. By contrast, attorneys representing the manufacturers and distributors are paid an hourly rate.

There may be investors funding the lawsuits who stand to benefit. Litigation-funding firms typically help pay the costs of litigation in return for a portion of the recovery, and Polster has asked for information about firms bankrolling the suits.

How the Opioid Settlement Could Work

Municipalities and others have brought lawsuits in state and federal courts. More than 900 have been filed so far.

Cases in federal court are before Polster and those in state courts are before local judges across the county.

As the parties negotiate, the drugmakers and distributors have filed dismissal requests.

Both sides will have a better sense of whether to settle—and for how much—after hearing a jury's verdict in the test trial Polster has scheduled for March. Legal rulings from him and other judges on whether the cases may proceed will also have a huge impact on a potential accord.

Polster has said he wants to reach a deal quickly, but that's looking increasingly unlikely. Talks will likely include lawyers for the municipalities, drugmakers, distributors, state attorneys general and the U.S. government.

From start to finish, the litigation could take about four years, one of the lawyers estimated. A settlement will almost surely include all the cases—in state and federal court.

In the end, a deal could be one of the most lucrative in history—or a huge disappointment to the communities battered by the crisis.

A larger question looms: whether litigation is really the best way to tackle the crisis. But little federal government action has left no other real options for cities and counties trying to handle the fallout and serve their constituents.

"The hundreds of communities that joined this litigation have done so because it's the only real way to meaningfully address the epidemic," lawyers Farrell, Hanly and Rice said in a statement.

Alexandra Lahav, who teaches at the University of Connecticut law school, said litigation may be the last, best hope.

"What people turn to is the courts," said Lahav, an expert in mass tort litigation. It's "an

imperfect fit for solving the myriad problems raised in these situations, but you have to go to the institutions that exist.”

Data Sources and Methodology

The list of lawsuit plaintiffs included in the multidistrict litigation was assembled from court transfer orders and court filings available as of July 23, 2018. Some cases have multiple plaintiffs. A small number of plaintiffs opposed their transfer orders and have been removed back to their original district courts, or may be at a later date. Those cases are included in this analysis.

Lawyer percentage fees were collected from retainer agreements, obtained by public records request, and from law firms and government officials. The fees reported are based on those available figures for settlement and/or judgment. Some agreements call for lesser or greater fees depending upon whether the case is resolved before the filing of a complaint, upon appeal and other contingencies.

Population and poverty rates for states, counties, cities and towns are from the 2012–2016 American Community Survey. Opioid prescription rates for states and counties are from the Centers for Disease Control 2016 prescribing rate dataset, which is based on QuintilesIMS Transactional Data Warehouse data.